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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,679	11/30/2001	Fumiaki Ikeda	216008US0PCT	1107

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EXAMINER

MOHAMED, ABDEL A

ART UNIT PAPER NUMBER

1653

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Advisory Action

Application No.

09/926,679

Applicant(s)

IKEDA ET AL.

Examiner

Abdel A. Mohamed

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-8 and 10-17.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Jon P. Weber
Jon P. Weber, Ph.D.
Primary Examiner

Continuation of 2. NOTE: It is noted that Applicant has canceled claims 1-8 and 10-17 and added claims 18-30. The claims as amended are directed to a method for the treatment or inhibition of an infectious disease caused by *Aspergillus fumigatus* by administering an effective amount of a lipopeptide compound of formula I in combination with Amphotericin B, Itraconazole, Nikkomycin X or Flucytosine (claim 18), a pharmaceutical composition for the prophylactic and/or therapeutic treatment of an infectious disease caused by a fungal pathogen comprising a lipopeptide compound of formula I in combination with Amphotericin B, Itraconazole, Nikkomycin X or Flucytosine (claim 20), and a pharmaceutical composition for the prophylactic and/or therapeutic treatment of an infectious disease caused by *Aspergillus fumigatus* comprising a lipopeptide compound of formula I in combination with Amphotericin B, Itraconazole, Nikkomycin X or Flucytosine (claim 30). Newly added claims 18-30 raise new issues with respect to the scope of the claims since the claims are now limited to specific compounds administered in vivo to treat the claimed diseases of claim 21 caused by specific fungal pathogen, namely *Aspergillus fumigatus* and a pharmaceutical formulation thereof as claimed in claim 30 or to a pharmaceutical composition for the prophylactic and/or therapeutic treatment of an infectious disease caused by a fungal pathogen (undefined fungal pathogen) comprising the composition of claim 18. However, such in vivo administration to treat the specific disease and pharmaceutical formulations thereof in the manner claimed in claims 18-30 were not dealt previously, and as such would require further consideration and search. Thus, since the amendment filed 7/9/04 was not entered, all the previous rejections under 35 U.S.C. 112, first paragraph for claims 1-8 and 10-17 and 35 U.S.C. 112, second paragraph for claims 2 and 11 are maintained for the reasons of record.